

United States District Court
District of South Dakota
Western Division

**SOUTHERN BLACK HILLS
WATER SYSTEM, INC., a Non-Profit
Corporation**

5:21Civ.05070-VLD

Plaintiff,

Consent Judgment

vs.

**TOWN OF HERMOSA, a South Dakota
Municipality**

Defendant.

Introduction

This action arises out of a dispute between Southern Black Hills Water System, Inc. (“SBHW”) and the Town of Hermosa. The First Amended Complaint [Docket #13] alleges that Hermosa violated SBHW’s rights under 7 U.S.C. § 1926(b) by annexing a subdivision in SBHW’s service area. That general contention is set forth in Counts One through Five of the First Amended Complaint. SBHW also brings an inverse condemnation claim alleging Hermosa took or damaged its exclusive utility easement on certain property without just compensation.

The parties brought cross-motions for summary judgment. [Docket #26 & #31] The Court entered an Opinion and Order granting summary judgment to each party on some claims, denying summary

judgment to each party on some claims, and holding certain determinations for trial. [Docket #54.] After the Court entered its Opinion and Order, the parties conferred and agreed it would be in the best interest of all parties to resolve all the remaining issues and avoid the need for a trial on the remaining issues and the expense caused by litigation. The parties desire to resolve the remaining disputes and consent to entry of final judgment consistent the Court's Opinion and Order. The parties have submitted this Consent Judgment to the Court to resolve all claims and, therefore, the parties consent to entry of judgment consistent with the terms of this Consent Judgment.

Therefore, with the consent of the parties, it is hereby
ORDERED, ADJUDGED AND DECREED:

Terms of Consent Judgment

1. Jurisdiction and Venue

1. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1367.
2. Venue is proper in the District of South Dakota pursuant to 28 U.S.C. § 1391 in that all claims alleged in this action arose within this District.
3. The Court may grant declaratory and all other relief necessary for this Judgment pursuant to 28 U.S.C. §§ 2201 & 2202.

2. Parties

1. SBHW is a rural water system that constitutes an association under 7 U.S.C. § 1926(b), and it has two outstanding Rural Development loans with the United States Department of Agriculture.
2. Hermosa is a South Dakota third-class municipality.

3. Background

In September 2021, Hermosa passed a resolution annexing various properties, including real property generally referred to as Lone Coyote Subdivision (“Lone Coyote”) and Utility Lot 1. These properties are legally described as:

UTILITY LOT 1 LOCATED IN SECTION 30, T2S, R8E, BHM,
CUSTER COUNTY SOUTH DAKOTA
and
PRESTON TRACT 1, LONE COYOTE SUBDIVISION, LOCATED IN
SECTION 19, T2S, R8E, BHM, CUSTER COUNTY SOUTH DAKOTA.

Hermosa claimed as result of this annexation it had exclusive right to provide water to the area annexed even though Hermosa had not constructed water facilities in the area at the time. At the time of annexation, SBHW was in the process of developing a water main that would pass by the properties and have sufficient capacity to serve the area. Also, SBHW had the ability to serve the area upon request. SBHW brought suit against Hermosa to determine its rights to serve the area and challenge Hermosa’s actions.

4. Count One

Count One of the First Amended Complaint seeks money damages for the revenue SBHW lost by virtue of Hermosa providing water to the Lone Coyote. The parties stipulate that the Lone Coyote has not begun construction, and Hermosa has not provided water to Lone Coyote. Therefore, Count One is dismissed without prejudice as moot.

5. Count Two

Count Two of the First Amended Complaint seeks a declaration that, pursuant to 7 U.S.C. § 1926(b), SBHW has the exclusive right to serve water to the annexed area including Lone Coyote. For the reasons set forth in this Court's Opinion and Order, the Court hereby declares that SBHW is legally entitled to be the exclusive service provider to Lone Coyote and the annexed area. SBHW further has the exclusive right to serve areas outside of Hermosa's municipal boundaries as the boundaries existed on August 1, 2021.

6. Count Three

Count Three of the First Amended Complaint sought an injunction to prevent Hermosa from serving Lone Coyote. Hermosa is not currently serving Lone Coyote or annexed area and, based on the Court's Opinion and Order, does not have the right to serve Lone Coyote or the annexed area. Therefore, Count Three is dismissed as moot. Based on the Court's decision as the exclusive right to serve being with SBHW, any attempt by Hermosa to serve the area may be subject

to further action by SBHW to enforce this Judgment, including the possibility of injunctive relief.

7. Counts Four & Five

In Count Four of the First Amended Complaint, SBHW sought a declaratory judgment that Hermosa's annexation of Lone Coyote was unlawful under South Dakota law. In Count Five of the First Amended Complaint, SBHW sought a declaratory judgment that Hermosa violated South Dakota law on awarding construction bids. For the reasons set forth in the Opinion and Order, SBHW lacks standing to challenge the annexation and the bid process. Therefore, Counts Four and Five are dismissed.

8. Count Six and SBHW's 42 U.S.C. § 1988 Attorney Fees Claim.

SBHW and Hermosa have reached an agreement for payment of SBHW's outstanding monetary claims for attorney fees, costs, and just compensation for the taking set forth in Count Six of the First Amended Complaint. Therefore, Count Six is dismissed.

9. Scope of Decree

Nothing in this Consent Judgment is intended to limit SBHW's rights to enforce this decree or its rights under any statute, regulation, common law, or other legal right. Nothing in this Consent Decree is intended to be an admission by Hermosa or constitute a judgment by the Court that the Hermosa has violated any statute, regulation, common law or other legal obligation except to the extent the judgment

specifically finds a violation or a violation was determined as a result of this Court's Opinion and Order on the Cross Motions for Summary Judgments.

So Ordered.

March 29
_____, 2024.



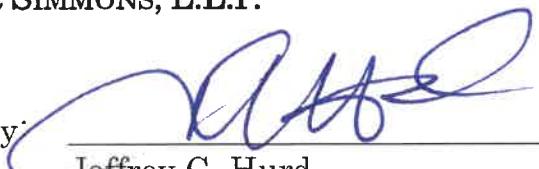
Honorable Veronica Duffy
District of South Dakota

The undersigned agree to the entry of this Consent Decree.

Respectfully submitted the 28th day of February 2024.

**BANGS, McCULLEN, BUTLER, FOYE
& SIMMONS, L.L.P.**

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ATTORNEYS FOR PLAINTIFF

Respectfully submitted the 28th day of March, 2024.

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